



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: LBM, Inc.

File: B-241299

Date: November 7, 1990

Frank Moody for the protester.
Herbert F. Kelley, Jr., Esq., Department of the Army, for the agency.
Linda S. Lebowitz, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

General Accounting Office will not consider protest of an alleged solicitation impropriety because protester did not timely file with the agency prior to bid opening its initial protest of the same solicitation impropriety.

DECISION

LBM, Inc. protests the award of a contract under invitation for bids (IFB) No. DAKF31-90-B-0094, issued by the Department of the Army for management and operation of the transportation motor pool at Fort Devens, Massachusetts. LBM contends that an improper wage determination was incorporated into the solicitation.

The solicitation was issued on July 18, 1990. Amendment No. 0003, issued on August 13, incorporated Department of Labor wage determination No. 82-662 (Rev. 2) 8/85. The amendment stated the agency included this wage determination "for information purposes," and stated that "a current wage determination ha[d] been requested and [would] become part of the solicitation/contract when received by [the agency]." Bid opening occurred on August 27.

By letter dated August 31, LBM filed an agency-level protest challenging the particular wage determination described in amendment No. 0003 as improper and contending that only LBM applied the proper wage determination in computing its bid. By letter dated September 18, the contracting officer denied LBM's agency-level protest. On September 25, LBM filed its protest with our Office again arguing that the agency included

an improper wage determination in the solicitation. Specifically, LBM argues that this wage determination was for information purposes only and that since the actual wage rate will be negotiated after award, the government ultimately may not receive the lowest price.

Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening must be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1990); Seaboard Electronics Co., B-237352, Jan. 26, 1990, 90-1 CPD ¶ 115. Furthermore, where a protest of alleged solicitation improprieties is initially filed with the contracting agency, a subsequent protest to our Office filed within 10 working days of the date the protester learns of initial adverse agency action on its agency-level protest will be considered, provided the initial protest to the agency was timely filed. 4 C.F.R. § 21.2(a)(3).

Here, the basis of LBM's protest concerns an alleged solicitation impropriety, i.e., the incorporation of an improper wage determination through an amendment to the solicitation. In order for LBM's protest to our Office to be considered timely filed, its agency-level protest had to be filed before bid opening on August 27. LBM filed its agency-level protest 4 days after bid opening by letter dated August 31. Its agency-level protest therefore was not timely filed prior to bid opening.

Accordingly, the protest is dismissed.

Michael R. Golden

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Assistant General Counsel